

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Corp. Petition for Preemption, Pursuant)	
to Section 253 of the Communications Act and)	
Common Law Principles, of South Carolina)	CC Docket No. 96-45
Statutes that Established an Interim Local)	
Exchange Carrier Fund)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,² hereby submits its comments in response to the *Public Notice*³ in the above-docketed proceeding.

INTRODUCTION AND SUMMARY

In its Petition,⁴ AT&T Corporation (AT&T) seeks preemption of South Carolina statutes and administrative procedures that established the Interim LEC Fund (ILF). AT&T argues that the ILF violates Section 253(a) of the Communications Act of 1934, as amended (Act), because it discriminates against new entrants by limiting their ability to compete with incumbent local

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *Public Notice*, CC Docket No. 96-45, DA 03-2779 (rel. Sept. 4, 2003) soliciting comment on AT&T Corporation's Petition for Preemption, Pursuant to Section 253 of the Communications Act and Common Law Principles, of South Carolina Statutes that Established an Interim Local Exchange Carrier Fund (*Public Notice*).

⁴ *AT&T Corp. Petition for Preemption to Section 253 of the Communications Act and Common Law Principles, of South Carolina Statutes that Discriminate Against New Entrants*, Petition for Preemption, CC Docket No. 96-45, filed Oct. 7, 2002 (Petition).

exchange carriers (ILECs) receiving distributions from the ILF and because it discriminates against long distance providers by requiring only those providers to contribute to the ILF.

AT&T also argues that the ILF is not protected under Section 253(b) of the Act because it is not competitively neutral and is not consistent with the requirements for federal universal service programs set forth in Section 254 of the Act.

USTA submits that the ILF does not discriminate against new entrants or long distance service providers. Accordingly, the ILF does not violate Section 253(a) of the Act. Further, USTA submits that AT&T's analysis of the South Carolina ILF under Section 253(b) of the Act is not relevant because the ILF does not provide universal service support.

DISCUSSION

I. The Interim LEC Fund Does Not Discriminate Against New Entrants.

The purpose of the South Carolina statutes that are the subject of AT&T's preemption Petition⁵ is to establish a rate rebalancing plan (Plan) for ILECs. An integral part of that Plan is a revenue recovery mechanism (*i.e.*, the ILF) for ILECs that are unable to raise rates sufficiently to offset access charge reductions.⁶ The ILF is not universal service support.

The Public Service Commission of South Carolina (PSC) has already determined that the purpose of the Plan is rate rebalancing. In the order⁷ that the PSC adopted after examining and considering the legislation enacting the ILF, the PSC found, through adoption of Exhibit A of the testimony of the South Carolina Telephone Coalition (SCTC), that the "Plan is intended to be a

⁵ Subsections (L) and (M) of S.C. Code Ann. §58-9-280 are the statutory provisions that establish and implement the ILF.

⁶ Distributions from the ILF are not based on ILEC costs.

⁷ *The Interim Local Exchange Carrier Fund*, South Carolina Public Service Commission, Order No. 96-882-C, Docket No. 96-318-C, (Dec. 30, 1996) (ILF Order) at 6-7.

stand alone plan to accomplish the rebalancing of intrastate switched access rates and . . . specific local service rates.”⁸ Notably, in testimony presented by AT&T before the PSC regarding the Plan, AT&T did not disagree with the intent of Plan, as stated in Exhibit A of the SCTC testimony.⁹

Under the Plan, ILECs may reduce their intrastate switched access rates to those of the largest local exchange carrier (LEC) in the state and they are permitted to increase certain local rates not to exceed the statewide average rates, weighted by the number of access lines. To encourage carriers participating in the Plan to increase local rates, the Plan Administration and Procedures (Exhibit A) limits the distribution amount a carrier can receive from the ILF if that carrier reduces access rates but does not raise local rates. In this scenario, a participating ILEC must impute the revenue it would have received had it raised local rates, according to a specified time schedule,¹⁰ thereby reducing the amount it would need from the ILF. If an ILEC has a revenue shortfall from its participation in the Plan (*i.e.*, the ILEC has reduced access charges and raised local rates or imputed the appropriate revenue for a raise in local rates) then the ILEC is entitled to receive distributions from the ILF as necessary.

⁸ Transcript of Testimony and Proceedings, Hearing #9562, Public Service Commission of South Carolina, Docket 96-318-C, Dec. 16, 1996 (Transcript) at Volume 1 of 3, pp. 50-61, Exhibit 1. Exhibit 1 is also titled Exhibit A, South Carolina Interim LEC Fund Administration and Procedures (Plan Administration and Procedures), which was submitted as an exhibit to the testimony of Keith Oliver on behalf of the South Carolina Telephone Coalition. Exhibit A was adopted with modifications by the PSC in the ILF Order.

⁹ See Testimony of James M. Mertz, AT&T, Transcript of Testimony and Proceedings, Hearing #9562, Docket 96-318-C, Dec. 16, 1996, before the Public Service Commission of South Carolina, at Volume 2 of 3, pp. 111-126 (AT&T Testimony) at 125.

¹⁰ See Plan Administration and Procedures, ¶ IV.B.

Contrary to the claim of AT&T that “support” from the ILF provides ILECs participating in the Plan with a competitive advantage because only ILECs receive it,¹¹ the so-called “support” is really distributions from a revenue replacement fund, which is one part of a rate rebalancing plan *for ILECs*. AT&T also claims that ILECs participating in the Plan have a competitive price advantage vis-à-vis new entrants because “support” from the ILF “effectively lowers the price for incumbent LEC-provided service relative to competitor-provided service.”¹² However, this claim simply fails to acknowledge the plain fact that ILECs participating in the Plan are either raising their rates or, if they do not raise rates, are imputing revenue as if they had raised rates.¹³ Clearly, distributions from the ILF to ILECs have at least a neutral, but more likely a beneficial, impact on the ability of competitors to enter and compete in the local and toll telephone markets in South Carolina. In addition, only ILECs that elect to participate in the Plan are required to reduce their intrastate switched access charges. Competitive local exchange carriers (CLECs) are free to set their access charges at economically rational amounts they deem appropriate. With no deterrence to competitive entry and no discrimination against new entrant competitors, the South Carolina ILF does not violate Section 253 of the Act.

II. The Interim LEC Fund Does Not Discriminate Against Long Distance Providers.

The ILF is funded by carriers that receive an access or interconnection rate reduction from LECs pursuant to the reduction in ILECs’ switched access rates. Carriers that benefit from these reduced access charges contribute to the ILF in proportion to the amount of the access

¹¹ Petition at 2 and 11.

¹² Petition at 2, 11, and 12.

¹³ As explained later, ILECs that do not raise their local rates cannot receive the full amount of the access charge reduction through a distribution from the ILF. Therefore, ILECs that do not

charge rate reduction less the amounts local rates were raised (or imputed). Notably, in testimony before the PSC, AT&T advocated that the PSC should “require all entities receiving an access rate reduction to fund the ILF in proportion to the amount of their reduction.”¹⁴ Now, AT&T seeks to revisit that point, arguing that “South Carolina’s funding mechanism singles out long distance providers, and does not require contributions from all carriers.”¹⁵

In fact, long distance providers are not singled out. Subsection (M) of the South Carolina statute enacting the Plan and the ILF essentially states that any carrier that benefits from reduced access charges must contribute to the ILF. More specifically, subsection (M) states that the ILF will be funded by “those entities receiving an access or interconnection rate reduction from LECs pursuant to subsection (L) in proportion to the amount of the rate reduction.”¹⁶ Furthermore, the PSC found in Exhibit A, which was adopted in the ILF Order, that “contributing carriers include, but are not limited to, IntraLATA toll providers, IXC/resellers (including IXC/reseller entrants), ACP providers to the extent that they terminate measured ACP minutes to a Participating LEC, and other carriers as applicable.”¹⁷ The statute does not discriminate between which IXCs must contribute to the ILF. Like IXC affiliates of CLECs, IXC affiliates of ILECs must contribute to the ILF to the extent they receive an access or interconnection rate reduction from LECs. Therefore, as a beneficiary of access charge reductions, AT&T must contribute to the ILF, as it

raise their local rates will reduce the amount of revenue they receive, making the choice not to raise local rates unlikely.

¹⁴ AT&T Testimony at 126.

¹⁵ Petition at 3.

¹⁶ S.C. Code Ann. §58-9-280 (M).

¹⁷ Transcript, Exhibit 1 (Exhibit A, ¶ II.A.).

agreed in testimony regarding the Plan that entities receiving access charge reductions should contribute to fund the ILF.¹⁸

There is no negative impact on carriers that must pay into the ILF because they are receiving access charge reductions from ILECs participating in the Plan, which are greater than their contributions to the ILF. From a different perspective, carriers contributing to the ILF benefit from the fact that ILECs participate in the Plan because the amounts carriers contribute into the ILF are less than the amounts they would have paid in access charges prior to the adoption of the Plan. This is so because ILECs are either raising local rates or imputing revenue as if local rates were raised and the result is that the distribution ILECs take from the ILF offsets access charge reductions and thus the amount beneficiaries of such reductions must contribute. In short, part of the reduction in intrastate switched access rates is now being funded by rebalancing other local rates. The ILF funds the remaining part of the access charge reduction. The impact of the Plan on carriers that must contribute to the ILF is that they are in a better position than they were prior to the adoption and implementation of the Plan. Because carriers that must contribute to the ILF are paying less than they previously were in intrastate switched access charges, they are not harmed by being required to make contributions to the ILF. Because only carriers that benefit from access charge reductions are required to contribute to the ILF, the South Carolina ILF does not discriminate against long distance providers and does not violate Section 253 of the Act.

III. The Interim LEC Fund Does Not Provide Universal Service Support.

As discussed earlier, the purpose of the Plan is to lower intrastate switched access charges and to rebalance other local rates. As conceived by the Plan, the ILF does not provide

¹⁸ See *infra*. n. 14.

universal service support. In a separate statute, the South Carolina legislature provides for the establishment of a state universal service fund (state USF), with its purposes to make basic local exchange telephone service universally available at affordable rates and to assist with the alignment of prices and/or cost recovery with costs.¹⁹ Despite the separate legislative purposes of the ILF and the state USF, the South Carolina statute that implements the ILF calls for the transition of the ILF into the state USF, for administrative ease, “when funding for the USF is finalized and adequate to support the obligations of the Interim LEC Fund.”²⁰ To date, the PSC has declined to require a transition because it has found that the state USF is neither finalized nor adequate to support the obligations of the Interim LEC Fund.²¹ Whenever the state USF is finalized and adequate to support the obligations of the ILF, the statute provides for the transition of the ILF to the state USF, but such a transition does not negate the purpose of the ILF, which is separate from that of the state USF.

AT&T argues that the ILF does not qualify for preemption protection under Section 253(b) of the Act because it is not competitively neutral and not consistent with the requirements for federal universal service programs set forth in Section 254 of the Act.²² Without agreeing to AT&T’s premise that the ILF violates Section 253(a), USTA believes that AT&T is simply wrong when it states that the ILF must comply with the requirements of Section 254 of the Act.

¹⁹ See S.C. Code Ann. §58-9-280 (E).

²⁰ S.C. Code Ann. §58-9-280 (M).

²¹ See *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, South Carolina Public Service Commission, Order No. 2001-419, Docket No. 97-239-C, (June 6, 2001) (State USF Order) at 38.

²² See Petition at 3 and 20.

Because the ILF is not a universal service fund, it is not governed by the requirements of Section 254 of the Act.

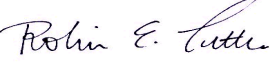
CONCLUSION

The rate rebalancing plan and the revenue recovery mechanism enacted by the South Carolina legislature are reasonable tools for lowering intrastate switched access charges, rebalancing local rates, preventing ratepayers from being put at risk from the rebalancing, and preventing ILECs from bearing the revenue shortfall caused by reduced access charges. However, South Carolina's ILF is not a state universal service fund.

South Carolina's ILF does not discriminate against new entrants or long distance providers. For these reasons, USTA urges the Commission to dismiss AT&T's Petition for Preemption, finding that the South Carolina Plan and ILF do not violate Section 253(a) of the Act and that the ILF is not a universal service fund and thus not subject to Section 254 of the Act.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

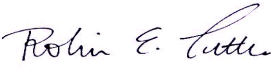
November 17, 2003

CERTIFICATE OF SERVICE

I, Robin E. Tuttle, do certify that on November 17, 2003, the aforementioned Comments of The United States Telecom Association were electronically mailed to the following:

Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-B540
Washington, DC 20554
Sheryl.todd@fcc.gov

Qualex International
Portals II
445 12th Street SW
CY-B402
Washington, DC 20554
qualexint@aol.com

By: 
Robin E. Tuttle